

After reviewing the record and considering the arguments of the parties, the Appeals Board finds that one hundred percent (100%) of the benefits paid or payable to claimant should be the responsibility of the Kansas Workers Compensation Fund and the Award of the Administrative Law Judge should, therefore, be reversed.

Pursuant to K.S.A. 44-567 the Kansas Workers Compensation Fund is liable for compensation to the employee when the employer knowingly hires or retains a handicapped employee who subsequently suffers a compensable work-related injury which is caused or contributed to by the preexisting impairment. The employer must have knowledge of an impairment which constitutes a handicap in obtaining or retaining employment. Carter v. Kansas Gas & Electric Co., 5 Kan. App. 2d 602, 621 P.2d 448 (1980). Evidence of an actual reservation in the mind of the employer is not required. Denton v. Sunflower Electric Co-op, 12 Kan. App. 2d 262, 740 P.2d 98 (1987); *aff'd* 242 Kan. 430, 748 P.2d 420 (1988).

Claimant in this case worked for the City of Plainville. Before going to work with the City, claimant worked as an employee in a business owned by the husband of Charlotte Ostrom. Charlotte Ostrom worked for that same company, Ostrom Well Service, as secretary/treasurer. While employed by Ostrom Well Service claimant injured his back, underwent low back surgery, was off work approximately one (1) year, and was unable to return to his work at Ostrom Well Service. Charlotte Ostrom testified that she knew claimant was injured picking up a sand pump. She knew he filed a workers compensation claim and knew he was off work for approximately a year. She also knew that after that year off work he was not able to come back to work because the doctor had told him he could not do that type of work any longer.

Claimant testified that after his injury with Ostrom Well Service he had difficulty obtaining employment, sometimes because of his back injury. He was ultimately hired by the City of Plainville. Sometime after claimant started working for the City, Charlotte Ostrom became a member of the City Council for the City of Plainville. The evidence establishes that the City Council for the City of Plainville hires and fires employees.

The Appeals Board first finds that the information Charlotte Ostrom had regarding claimant's prior low back injury was knowledge of a preexisting impairment which constituted a handicap in obtaining or retaining employment. The level of knowledge required need not be a particular diagnosis. Knowledge of physical limitations may constitute knowledge of an impairment constituting a handicap. Denton v. Sunflower Electric Co-op, *supra*.

The focal point for the dispute in this case relates to whether the knowledge of Charlotte Ostrom constituted knowledge on the part of the employer. Counsel for the Kansas Workers Compensation Fund points out she was only one of several council members. The record contains no evidence that she ever conveyed or discussed with other council members her knowledge of claimant's prior injury. There is no evidence that any other council members knew of the injury.

The Appeals Board finds, however, that knowledge on the part of Charlotte Ostrom should be considered knowledge of the respondent. The Appeals Board does not construe the Act to require that knowledge exist in the mind or minds of the final hiring authority(s). We consider it sufficient if a person or persons who participate in the hiring or retention process either by recommendation or by vote have the requisite knowledge.

The provisions of K.S.A. 44-567 are to be liberally construed in favor of the legislative goal of encouraging the employment of handicapped workers. Nuttle v. CertainTeed Corp., 10 Kan. App. 2d 225, 696 P.2d 415 (1985). Those goals are not, of course, advanced if an employer retains an employee without any knowledge of the impairment or handicap. On the other hand, when an individual in a position to influence the hiring or retention of the employee has knowledge of the handicap, that knowledge should be sufficient.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge George R. Robertson, dated June 5, 1995, should be, and the same is hereby reversed. 100% of the liability for benefits paid or payable to the claimant are hereby assessed against the Kansas Workers Compensation Fund.

Fees necessary to defray the expense of administration of the Workers Compensation Act are assessed against the Workers Compensation Fund which is directed to reimburse the respondent for/or pay directly the costs of the transcripts as follows:

Richard A. Parsons, C.S.R. Settlement Hearing Transcript dated August 9, 1994	\$ 42.20
Underwood and Shane Deposition of Dr. C. Reiff Brown dated January 3, 1995	\$132.00
Deposition of Robert Wise dated January 24, 1995	\$111.50
Deposition of Charlotte Ostrom dated January 24, 1995	\$111.50
Total	\$355.00
Owens, Brake, Cowan & Associates Regular Hearing Transcript dated April 7, 1995	\$ 51.96

IT IS SO ORDERED.

Dated this ____ day of October, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Richard L. Friedeman, Great Bend, Kansas
Jerry Moran, Hays, Kansas
George R. Robertson, Administrative Law Judge
Philip S. Harness, Director